

AMENDED IN SENATE JULY 7, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by ~~Committee on Health (Gallegos (Chair),
Baugh (Vice Chair), Aanestad, Bates, Corbett, Firebaugh,
Kuehl, Steinberg, Strickland, Thomson, Vincent, Wayne,
and Wildman)~~ Assembly Member Gallegos

February 23, 1999

An act to ~~amend Section 1357.14 of~~ add Section 1367.25 to the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, ~~Committee on Health Gallegos~~. Health care coverage: ~~small employer health care service plans~~ medical groups: pharmaceuticals.

Existing law, the Moscone-Knox Professional Corporation Act, provides for the formation of a corporation under the General Corporation Law for the purposes of qualifying as a professional corporation that is engaged in rendering professional services in a single profession, and permits a professional corporation to render professional services through persons who are licensed in the profession.

This bill would authorize only health care provider organizations, as defined, that meet prescribed conditions to assume any financial risk, as defined, for providing or prescribing for medically necessary pharmaceuticals, including, but not limited to, oral, injectable, intranasal, topical, and rectal agents.

Existing law provides for the licensure and regulation of health care service plans, administered by the Commissioner of Corporations. Willful violation of those provisions is a crime.

By changing the requirements of health care provider organizations, as defined, the bill would change the definition of a crime applicable to health care service plans, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires health care service plans to make certain disclosures in connection with the offering for sale of any plan contract to a small employer, as part of its solicitation and sales materials. Existing law requires every solicitor or solicitor firm contracting with one or more plans to solicit enrollments or subscriptions from small employers, when recommending a particular benefit plan design or designs, to advise the small employer that, upon request, the agent will provide the employer with a designated brochure containing the benefit plan design or designs being recommended.~~

~~This bill would conform this provision to related provisions governing health care service plans by deleting references to benefit plan design and agent and replacing those references with contract plan and solicitor.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 1357.14 of the Health and Safety~~
- 2 *SECTION 1. Section 1367.25 is added to the Health*
- 3 *and Safety Code, to read:*
- 4 *1367.25. (a) It is the intent of the Legislature to*
- 5 *preserve continuity of care for patients and their access*
- 6 *to medically necessary or appropriate pharmaceuticals*
- 7 *by permitting only those health care provider*
- 8 *organizations that have sufficient control over*

1 *pharmaceutical benefits to assume financial risk for*
2 *pharmacy.*

3 *(b) Only a provider organization that meets all of the*
4 *following conditions may assume any financial risk from*
5 *a health care service plan for providing or prescribing*
6 *injectable, intranasal, topical, and rectal agents:*

7 *(1) The provider organization directly contracts with*
8 *pharmaceutical companies, pharmaceutical benefit*
9 *management companies, or both, for the financial risk*
10 *assumed.*

11 *(2) The provider organization negotiates and*
12 *establishes the composition of a pharmaceutical benefit*
13 *package for which it is assuming financial risk.*

14 *(3) The provider organization develops and controls*
15 *the use of a formulary, in consultation with an expert*
16 *pharmacy and therapeutic committee, in conjunction*
17 *with any financial risk it has assumed.*

18 *(c) A provider organization that does not qualify for*
19 *assuming financial risk for pharmaceuticals under this*
20 *section shall not be prohibited from entering into a*
21 *contractual arrangement with a health care service plan*
22 *related to pharmaceuticals to promote quality service,*
23 *medically necessary or appropriate care, and*
24 *cost-effective prescribing so long as such arrangement*
25 *does not expose the provider organization to financial*
26 *loss.*

27 *(d) For the purposes of this section, “financial risk”*
28 *means a method of payment where there is a possibility*
29 *of financial loss, including, but not limited to, capitation*
30 *in which the provider organization accepts a fixed*
31 *amount of payment per subscriber or enrollee per period*
32 *of time.*

33 *(e) For purposes of this section, a “provider*
34 *organization” means a professional medical corporation*
35 *and other forms of lawfully organized medical groups*
36 *that deliver, furnish, or otherwise arrange for or provide*
37 *health care services. For the purposes of this section, a*
38 *“provider organization” shall not include a lawfully*
39 *organized medical group that contracts exclusively with*

1 one nonprofit health care service plan that serves more
2 than 3,500,000 enrollees in the state.

3 (f) Any provider organization that develops and
4 controls the use of a formulary under this section as part
5 of a contractual arrangement with a health care service
6 plan shall be subject to the requirements of Sections
7 1363.01, 1367.20, 1367.22, 1367.24 and other relevant
8 requirements of law related to pharmacy benefits as
9 specified by the department.

10 SEC. 2. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because the only costs that may be incurred
13 by a local agency or school district will be incurred
14 because this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition
18 of a crime within the meaning of Section 6 of Article
19 XIII B of the California Constitution.

20 Code is amended to read:

21 ~~1357.14. In connection with the offering for sale of any~~
22 ~~plan contract to a small employer, each plan shall make~~
23 ~~a reasonable disclosure, as part of its solicitation and sales~~
24 ~~materials, of the following:~~

25 ~~(a) The extent to which premium rates for a specified~~
26 ~~small employer are established or adjusted in part based~~
27 ~~upon the actual or expected variation in service costs or~~
28 ~~actual or expected variation in health condition of the~~
29 ~~employees and dependents of the small employer.~~

30 ~~(b) The provisions concerning the plan's right to~~
31 ~~change premium rates and the factors other than~~
32 ~~provision of services experience that affect changes in~~
33 ~~premium rates.~~

34 ~~(c) Provisions relating to the guaranteed issue and~~
35 ~~renewal of contracts.~~

36 ~~(d) Provisions relating to the effect of any preexisting~~
37 ~~condition provision.~~

38 ~~(e) Provisions relating to the small employer's right to~~
39 ~~apply for any contract written, issued, or administered by~~
40 ~~the plan at the time of application for a new health care~~

1 ~~service plan contract, or at the time of renewal of a health~~
2 ~~care service plan contract.~~

3 ~~(f) The availability, upon request, of a listing of all the~~
4 ~~plan's contracts offered to small employers, including the~~
5 ~~rates for each contract.~~

6 ~~(g) At the time it offers a contract to a small employer,~~
7 ~~each plan shall provide the small employer with a~~
8 ~~statement of all of its plan contracts offered to small~~
9 ~~employers, including the rates for each plan contract, in~~
10 ~~the service area in which the employer's employees and~~
11 ~~eligible dependents who are to be covered by the plan~~
12 ~~contract work or reside. For purposes of this subdivision,~~
13 ~~plans that are affiliated plans or that are eligible to file a~~
14 ~~consolidated income tax return shall be treated as one~~
15 ~~health plan.~~

16 ~~(h) Each plan shall do all of the following:~~

17 ~~(1) Prepare a brochure that summarizes all of its plan~~
18 ~~contracts offered to small employers and to make this~~
19 ~~summary available to any small employer and to solicitors~~
20 ~~upon request. The summary shall include for each~~
21 ~~contract information on benefits provided, a generic~~
22 ~~description of the manner in which services are provided,~~
23 ~~such as how access to providers is limited, benefit~~
24 ~~limitations, required copayments and deductibles,~~
25 ~~standard employee risk rates, an explanation of the~~
26 ~~manner in which creditable coverage is calculated if a~~
27 ~~preexisting condition or affiliation period is imposed, and~~
28 ~~a phone number that can be called for more detailed~~
29 ~~benefit information. Plans are required to keep the~~
30 ~~information contained in the brochure accurate and up~~
31 ~~to date and, upon updating the brochure, send copies to~~
32 ~~solicitors and solicitor firms with whom the plan contracts~~
33 ~~to solicit enrollments or subscriptions.~~

34 ~~(2) For each contract, prepare a more detailed~~
35 ~~evidence of coverage and make it available to small~~
36 ~~employers, solicitors, and solicitor firms upon request.~~
37 ~~The evidence of coverage shall contain all information~~
38 ~~that a prudent buyer would need to be aware of in making~~
39 ~~contract selections.~~

~~(3) Provide to small employers and solicitors, upon request, for any given small employer the sum of the standard employee risk rates and the sum of the risk adjusted employee risk rates. When requesting this information, small employers, solicitors, and solicitor firms shall provide the plan with the information the plan needs to determine the small employer's risk adjusted employee risk rate.~~

~~(4) Provide copies of the current summary brochure to all solicitors and solicitor firms contracting with the plan to solicit enrollments or subscriptions from small employers.~~

~~For purposes of this subdivision, plans that are affiliated plans or that are eligible to file a consolidated income tax return shall be treated as one health plan.~~

~~(i) Every solicitor or solicitor firm contracting with one or more plans to solicit enrollments or subscriptions from small employers shall do all of the following:~~

~~(1) When providing information on contracts to a small employer but making no specific recommendations on particular plan contracts:~~

~~(A) Advise the small employer of the plan's obligation to sell to any small employer any plan contract it offers to small employers and provide them, upon request, with the actual rates that would be charged to that employer for a given contract.~~

~~(B) Notify the small employer that the solicitor or solicitor firm will procure rate and benefit information for the small employer on any plan contract offered by a plan whose contract the solicitor sells.~~

~~(C) Notify the small employer that upon request the solicitor or solicitor firm will provide the small employer with the summary brochure required under paragraph (1) of subdivision (h) for any plan contract offered by a plan with whom the solicitor or solicitor firm has contracted with to solicit enrollments or subscriptions.~~

~~(2) When recommending a particular plan contract, advise the small employer that, upon request, the solicitor will provide the small employer with the brochure required by paragraph (1) of subdivision (h) containing~~

~~the plan contract or contracts being recommended by the solicitor or solicitor firm.~~

~~(3) Prior to filing an application for a small employer for a particular contract:~~

~~(A) For each of the plan contracts offered by the plan whose contract the solicitor or solicitor firm is offering, provide the small employer with the benefit summary required in paragraph (1) of subdivision (h) and the sum of the standard employee risk rates for that particular employer.~~

~~(B) Notify the small employer that, upon request, the solicitor or solicitor firm will provide the small employer with an evidence of coverage brochure for each contract the plan offers.~~

~~(C) Notify the small employer that, from July 1, 1993, to July 1, 1996, actual rates may be 20 percent higher or lower than the sum of the standard employee risk rates, and from July 1, 1996, and thereafter, actual rates may be 10 percent higher or lower than the sum of the standard employee risk rates, depending on how the plan assesses the risk of the small employer's group.~~

~~(D) Notify the small employer that, upon request, the solicitor or solicitor firm will submit information to the plan to ascertain the small employer's sum of the risk adjusted employee risk rate for any contract the plan offers.~~

~~(E) Obtain a signed statement from the small employer acknowledging that the small employer has received the disclosures required by this section.~~